IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 332 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEWTON @ YOGENDRAKUMAR RAMANLAL

Versus

MOHANRAO SHANKER RAO PATIL (THROUGH LEGAL HEIRS)

Appearance:

1. Civil Revision Application No. 332 of 2003

MR PRADEEP PATEL for Petitioner No. 1

MR ND SONGARA for Respondent No. 1

..... for Respondent No. 1/1-1/4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 31/08/2004

ORAL JUDGEMENT

1. Rule. Mr.N.D.Songara, learned advocate, waives service of rule on behalf of respondents. With the

consent of parties, the matter is taken up for hearing today.

2. The petitioner herein has challenged the order dated 23rd April, 2003, passed by the learned Jt.District Judge, Anand, in Civil Appeal No.58 of 1994, by which the appellate court has partly allowed the appeal filed by the present respondents and has fixed Rs.150/- as standard rent of the suit premises.

3. At the time of hearing of this petition, learned advocate for the petitioner submitted that, the original plaintiff, Mohanrao Shanker Rao Patil, who was the appellant before the District Court died during the pendency of appeal and his heirs were not brought on record, and therefore, the appellate court could not proceeded further on appeal, as the appeal stands abated. It is also further submitted that the appeal before the District Court was not maintainable and only revision under Section 29(3) of the Rent Act was maintainable. It is, therefore, submitted that the appellate court has committed an error of jurisdiction in deciding the said appeal which was not maintainable.

4. Considering the aforesaid aspect of the matter, learned advocate for the respondents has fairly submitted that he has no objection if the appeal of the present respondents be treated as revision under sec.29(3) of the Rent Act. Under the circumstances, the following order is passed with the consent of the learned advocates.

5. This Revision Application is allowed by quashing and setting aside the order of the learned Jt.District Judge, Anand, passed in Civil Appeal No.58 of 1994. The said appeal be treated as revision under sec.29(3) of the Rent Act. The Registry of the District Court may give appropriate number treating the appeal as revision under sec.29(3) of the Rent Act. It will be open for the respondents herein to apply by way of appropriate application for bringing on record the heirs and legal representatives of deceased original appellant Mohanrao Shanker Rao Patil. After remand the present respondents No.1/1 to 1/4 may give appropriate application before the revisional court for permitting them to be brought on record. Mr.Patel, learned advocate for the petitioner has submitted that, if any such application is filed, his client will not object granting of such application. Such application to be preferred within a period of two months. Thereafter the matter may be given appropriate number by the Registry of the court, and thereafter the court shall decide the same in accordance with law. Writ

to be sent to the District Court, Anand, forthwith. Rule is made absolute to the aforesaid extent. No order as to costs.

(P.B. Majmudar, J.)

syed/